

48A C.J.S. Judges § 370

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

X. Special or Substitute Judges and Like Judicial Officers

C. Authority, Powers, and Duties of Special or Substitute Judge

§ 370. Duration of authority of special or substitute judge—Powers after expiration of term of court

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

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Whether or not the authority of a special, substitute, or like judge extend beyond the term depends on the constitutional and statutory provisions under which he or she was selected.

Whether or not the jurisdiction of a special, substitute, or similar judge ends with the term of the court depends on the constitutional and statutory provisions under which he or she was selected.¹ Under some provisions, a special judge enjoys the power and authority of a regular judge only during the session of court in that county in which the special judge is duly appointed to hold court.² While it has been held that the judge can acquire such jurisdiction by waiver or consent,³ there is also authority to the contrary.⁴

Under different statutes, where a special judge is selected to try a particular case, the special judge's jurisdiction over the case does not end with the term at which he or she was selected but continues until the end of the proceedings in the court.⁵ In some jurisdictions, a special judge has the power to extend the term of court for the purpose of completing the cases he or she was appointed to try.⁶ Likewise, where the rule is that once a judge pro tem has begun consideration of a case, he or she has jurisdiction to hear the case to completion, the expiration of a term does not necessarily end a judge pro tem's authority.⁷

A rule permitting a judge to sign an order out of session so long as the hearing to which the order relates was held in session applies to all judges, including emergency judges.⁸

CUMULATIVE SUPPLEMENT

Cases:

Appeal that was originally heard during one supreme court term, but that remained undecided when the term ended, would be heard and decided by the elected justices constituting the supreme court in the following term, including newly-elected justice who replaced justice who had recused himself from hearing the original appeal, and not including special justice who had been appointed to replace recused justice; special justice's appointment expired when the recused justice's disqualification ended, which occurred when his term expired, and constitution provided for the elected justices of the supreme court to determine pending appeals. *Ark. Const. amend. 80, §§ 13(A), 16; Ark. Code Ann. § 21-1-102(a)(1). Smith v. Wright, 2015 Ark. 189, 461 S.W.3d 687 (2015).*

[END OF SUPPLEMENT]

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Footnotes

- 1 Ind.—*Railroad School Tp., Starke County v. Christensen*, 88 Ind. App. 86, 169 N.E. 533 (1928).
Mo.—*State ex rel. Nickerson v. Rose*, 351 Mo. 1198, 175 S.W.2d 768 (1943).
- 2 N.C.—*Green by Green v. Maness*, 69 N.C. App. 403, 316 S.E.2d 911 (1984).
- 3 Ky.—*Small v. Reeves*, 37 S.W. 682 (Ky. 1896).
- 4 N.C.—*Lewis v. Harris*, 238 N.C. 642, 78 S.E.2d 715 (1953).
- 5 Ky.—*Wedding v. Lair*, 404 S.W.2d 451 (Ky. 1966).
Nunc pro tunc judgment
The power of a special judge does not necessarily cease with the adjournment of a term, and he or she may, at a subsequent term, enter a nunc pro tunc judgment in a case.
Tex.—*Baker v. State*, 159 Tex. Crim. 130, 261 S.W.2d 593 (1953).
- 6 Ky.—*Elkins v. Gilliam*, 255 S.W.2d 645 (Ky. 1952).
- 7 Ind.—*Hupp v. Hill*, 576 N.E.2d 1320 (Ind. Ct. App. 1991).
- 8 N.C.—*Hockaday v. Lee*, 124 N.C. App. 425, 477 S.E.2d 82 (1996).